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83-862

NO._____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

JIMMY AMMONS, *Petitioner*

V.

BILLY WAYNE BALDWIN.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I

QUESTIONS PRESENTED

Whether the conduct of a Mississippi State Justice Court Judge is shielded from liability for damages under 42 U.S.C. §1983 when, as in the case *sub judice*, the Judge threatened to abuse Petitioner physically and the Federal Appellate Court determined that the "threat of physical abuse is clearly not a normal judicial function".

Whether the Federal Appellate Court misapplied its four-part test to determine whether an act is sufficiently judicial to warrant immunity [the four-part test as adopted in *Brewer v. Blackwell*, 692 F. 2d 387 (5th Cir. 1982)].

Whether the scope and application of the rule in *Pierson v. Ray*[1] should be reexamined, modified or amended when those exceptional and rare circumstances of judicial misconduct, as represented here, result in the deprivation of a person's constitutional rights and the public interest is left unprotected.

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1. 386 U.S. 547, 87 S. Ct. 1213 (1967).

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NO._____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

JIMMY AMMONS, *Petitioner*

V.

BILLY WAYNE BALDWIN.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Jimmy Ammons, the Petitioner herein, prays that a writ of certiorari issue to review the judgment of The United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on May 31, 1983.

OPINIONS BELOW

The Memorandum Opinion of the District Court is unreported and is printed in Appendix C hereto, infra, A12. The judgment of the Circuit Court is printed in Appendix C hereto, infra, A3.

JURISDICTION

The judgment of the Circuit Court (Appendix C, infra, A3) was entered on May 31, 1983. A timely petition for rehearing was denied on July 18, 1983 (Appendix B, infra, A2). The jurisdiction of the Supreme Court is invoked under Title 28, United States Code, Section 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws.

This case also involves Title 42, United States Code, §1983, which provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This is a §1983 cause of action for damages brought by Jimmy Ammons on March 15, 1982, pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1343. This controversy arose out of a series of events occurring on February 9, and February 10, 1982, in and/or near the City of Olive Branch, DeSoto County, Mississippi. Ammons had pursued a "hit-and-run" charge against a person named Nick Sapp. The affidavit for this charge was filed with Mississippi State Justice Court Judge Billy Wayne Baldwin on the evening of February 9, 1982. At the time of the filing of the affidavit by Ammons, Judge Baldwin was ostensibly under the influence of alcoholic intoxicants resulting in unusual or abnormal behavior by said Judge during subsequent hours of that evening, and at other times on the following morning.

In the early morning hours of February 10, 1982, Ammons reappeared before Judge Baldwin to pursue the hit-and-run charge against Nick Sapp. Judge Baldwin failed to disqualify or otherwise recuse himself from this proceeding, even though he was ostensibly operating or performing his courtroom "business" while under the influence of intoxicating beverages. Baldwin subsequently permitted, or persuaded, the defendant, Nick Sapp, to sign an affidavit charging Ammons with "assault" for some mysterious or unexplainable reason.

In the course of the "courtroom proceedings", Judge Baldwin ordered Ammons to pay the "sum of $300.00 in cash", on behalf of Sapp, Ammons, and a third person, Ricky Haygood, or suffer confinement to the DeSoto County Jail in Hernando, Mississippi. Ammons determined that he had no choice except to comply with the

order for payment of the $300.00, and this sum was paid in due course to Judge Baldwin.

Ammons brought suit against Baldwin to recover civil damages resulting from the action by the Judge on February 9, and February 10, 1982. Ammons instituted an action pursuant to 42 U.S.C. §1983, which makes liable "every person" who under color of law, deprives another person of his civil rights. Ammons supported his claim with a lengthy affidavit detailing the actions of Judge Baldwin in the case. As a result, the District Court made a determination that the doctrine of judicial immunity, as raised in a motion to dismiss by Judge Baldwin, would preclude any remedy under 42 U.S.C. §1983, as sought by Ammons.[2]

The District Court, in its ruling, found that the acts of Judge Baldwin were shielded by the defense of judicial immunity. Ammons advanced his contention that Judge Baldwin was stripped of this defense when the Judge's conduct, by its own nature and function, caused the Judge to act without judicial authority or jurisdiction. Ammons claimed that Judge Baldwin committed acts which are wholly incompatible with judicial function. Accordingly, Ammons submitted that a judicial function or act must be grounded in the underlying framework of jurisdiction and judicial power.

Ammons has claimed that Judge Baldwin threatened to abuse him physically.[3] The Appellate Court, citing *Gregory v. Thompson*, 500 F 2d 59, 64 (9th Cir. 1974),

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2. Appendix C, A12-13.
3. Appendix D, A16.

determined that "the threat of physical abuse is clearly not a normal judicial function".[4] The lower court further held that "refusing to extend that immunity to threats of physical harm is unlikely to inhibit fearless exercise of the judicial function".[5]

THE EVIDENCE

The action of Judge Baldwin on the evening of February 9, and the morning of February 10, 1982, has resulted in injury to Ammons. Baldwin took action indicating an immediate intent to carry out his alleged threats to harm Ammons physically. The mental anguish and suffering by Ammons was the proximate result of the conduct of the Judge. Ammons' affidavit filed in support of his response to Baldwin's motion to dismiss the complaint in the District Court contains numerous allegations of threatened physical harm to his person by Judge Baldwin.[6] The fear of imminent harm was ever-present throughout Ammons' confrontation with the Judge on the dates in question. The alleged threats of physical harm against Ammons were sufficient to establish tort remedies under 42 U.S.C. §1983.[7]

THE RULINGS BELOW

The District Court ruled, inter alia, that "a Section 1983 action must be based upon deprivation of federally created rights, not merely upon the violation of state

4. Appendix C, A10.
5. Id.
6. Appendix D, A14-20.
7. Bart v. Telford, 677 F. 2d 622, 625 (7th Cir. 1982).

statutes".[8] Strangely, the District Court looked to guidance in *Missouri Ex Rel Gore v. Wochner*, 475 F. 2d 274 (ED Mo. 1979) which holds "it is only when a violation of state law results in an infringement of a federally protected right that a cause of action may be said to exist".[9]

The Court, therefore, found no violation of the rights secured by the Fourteenth Amendment to the Constitution of the United States, and other federally protected rights.

These findings were reached prior to *Brewer v. Blackwell*.[10] In *Brewer*, the Appellate Court held, inter alia,

> "When, however, judicial officers act in a "non-judicial" capacity, they are not immune from liability for that conduct." ..."If on occasion their acts involve both judicial and non-judicial conduct, the unprotected behavior must be separated from the shielded and judges are liable for the acts that were not judicial".[11]

Ammons has alleged that Judge Baldwin's action violated certain State law and the Mississippi Constitution. These violations purportedly resulted in an infringement of Ammons' federally created rights pursuant to the Fourteenth Amendment to the United States Constitution.[12]

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8. Appendix C, A13.
9. 475 F. Supp. 274, 277 (1979), Appendix C, A13.
10. 692. F. 2d 387 (5th Cir. 1982).
11. Id., p. 397.
12. Appendix C, A5-6.

The Court of Appeals agreed with the District Court as to the application of the doctrine of judicial immunity, but determined that the "threat of physical abuse is clearly not a normal judicial function".[13] In the conclusion of its Opinion, the Appellate Court found also that "the part of Ammons' claim that does not fail because of judicial immunity, therefore, fails because it does not allege an injury which rises to the minimal level required to invoke Federal jurisdiction".[14]

The Court of Appeals apparently expressed no disagreement with the District Court's findings, but found that "there is no assertion that Ammons was placed in fear of imminent harm, or that Baldwin took any actions indicating an immediate intent to carry out the alleged threats".[15]

REASON FOR GRANTING THE WRIT

I.

Certiorari should be granted to resolve conflicts in principle among the lower courts.

The issue in this case, after *Pierson*, is no longer the existence of absolute judicial immunity, but rather its *scope*. When, if ever, does a judge lose this absolute judicial immunity? *Pierson*, supra, a relatively easy case

13. Appendix C, A10.
14. Appendix C, A11.
15. Id.

which involved a judge who acted in the most traditional judicial capacity, held, not surprisingly, that a judge acts within his judicial jurisdiction even in applying a statute unconstitutionally.[16] But the Appellate Court in *Brewer v. Blackwell*, supra, qualified the immunity of judicial officers acting in a "non-judicial" capacity. In the case *sub judice*, the Appellate Court referred to its four-part test set forth in *Brewer*.[17] Here, the Court held

> "We have established a four-part test to determine whether an act is sufficiently judicial to warrant immunity. We inquire whether: (1) the offending action is a normal judicial function; (2) it occurred in the judge's courtroom or chambers; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose "directly and immediately out of a visit to the judge in his official capacity".[18]

However, this same Appellate Court in the case *sub judice* determined that "the threat of physical abuse is clearly not a normal judicial function".[19] The court found no assertion that Ammons was placed in fear of imminent harm, or that Baldwin took any actions indicating an immediate intent to carry out the alleged threats.[20]

But there is a division among the lower appellate courts as to the scope of absolute judicial immunity in those cases involving threats of physical harm. In *Gregory v.*

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16. 386 U.S., at 558.
17. Appendix C, A9.
18. Brewer v. Blackwell, 692 F. 2d, at 396; Appendix C, A9.
19. Appendix C, A10.
20. Appendix C, A11.

Thompson, supra, the Ninth Circuit held that a judge was not entitled to immunity for using physical force to remove from the courtroom a person who refused to leave voluntarily. The threat of physical force, like its actual application, strays too far from the normal conduct of a judge to enjoy immunity.[21] Judge Baldwin's conduct, whatever its character or nature, allegedly threatened the physical well-being of Ammons. The verbal assault created impressions of fear and reprisal in the mind of Ammons.[22]

The opinions of the various appellate courts below, particularly the Fifth and Ninth Circuits, are in conflict as to the scope of the absolute judicial immunity to be extended or applied to such cases where the judge threatens physical harm to a participant in the proceeding. The standards of *Pierson v. Ray*, supra, as to the scope of absolute judicial immunity to be extended to the case *sub judice*, call for much soul-searching.

The court below excused the imposition of its self-adopted four-part test arising under *Brewer*, supra, when it apparently determined that Judge Baldwin's conduct resulted in no injury to Ammons and, therefore, Ammons' claim "fails because it does not allege an injury which rises t the minimal level required to invoke federal jurisdiction".[23]

The simultaneous application of contradictory standards by the court below leads to anomalous results. The

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21. 500 F. 2d 59, 64 (9th Cir. 1974).
22. Appendix D, A18.
23. Appendix C, A11.

court below limited the remedy by its misapplication of the *Brewer* tests as to the determination whether an act is sufficiently judicial to warrant immunity. This limitation is contradictory to the finding of *Gregory*, supra, which the same court below followed in its opinion in the case *sub judice*.[24]

Thus, this case is affected more than any other by those conflicts, which should be resolved by this Court in order to establish a uniform approach to determine whether an act is sufficiently judicial to warrant immunity pursuant to *Pierson*, supra.

II.

Other inequalities in the application of the doctrine of absolute judicial immunity, coupled with indiscretions of judicial officers, provide further reason for requiring the only workable remedy: the rule of *Pierson v. Ray* must be exhaustively reconsidered in light of the arbitrary or capricious "acts" by Judge Baldwin in this case.

The dissent of Justice Douglas in *Pierson v. Ray* must be reexamined in the wake of the conduct by Judge Baldwin in the case *sub judice*. Approximately eleven (11) years following the Fifth Circuit decision in *Pierson v. Ray*, Justice Powell wrote a careful dissent from the majority in *Stump v. Sparkman*,[25] as follows:

> "While I join the opinion of Mr. Justice Stewart, I wish to emphasize what I take to be the central

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24. Appendix C, A10.
25. 435 U.S. 349 (1978), 55 L Ed 2d 331, 347.

feature of this case - Judge Stump's preclusion of any possibility for the vindication of respondents' rights elsewhere in the judicial system."

Bradley v. Fisher, 13 Wall 335, 20 L Ed 646 (1872), which established the absolute judicial immunity at issue in this case, recognized that the immunity was designed to further the public interest in an independent judiciary, sometimes at the expense of legitimate individual grievances. Id., at 349, 20 L Ed 646; accord *Pierson v. Ray* 386 U.S. 547, 554, 18 L Ed 2d 288, 87 S Ct 1213 (1967). The Bradley Court accepted those costs to aggrieved individuals because the judicial system itself provided other means for protecting the individual rights:

"Against the consequence of judges' erroneous or irregular action, from whatever motives proceeding, the law has provided for private parties numerous remedies, and to those remedies they must, in such cases, resort". 13 Wall at 354, 20 L Ed 646.

Underlying the Bradley immunity, then is the notion that private rights can be sacrificed in some degree to the achievement of the greater public good deriving from a completely independent judiciary, because there exist alternative forums and methods for vindicating those rights.

But where a judicial officer acts in a manner that precludes all resort to appellate or other judicial remedies that otherwise would be available, the underlying assumption of the Bradley doctrine is inoperative. See Pierson v. Ray, supra, at 554, 18 L Ed 2d 288, 87 S Ct ante, at 369, 55 L Ed 2d 346, Judge Stump's unjudicial conduct [emphasis added] ***insured that "there was and could be no appeal". The complete absence of normal judicial process fore-***

closed resort to any of the "numerous remedies" that "the law has provided for private parties". Bradley, supra, at 354, 20 L Ed 646.

In sum, I agree with Mr. Justice Stewart that petitioner judge's actions were not "judicial", and that he is entitled to no judicial immunity from suit under 42 U.S.C. §1983". [emphasis added]

Why should a citizen be subjected to this form of prejudice and/or suffering merely because the doctrine as applied in *Pierson v. Ray* insulates the inferior court from any accountability? The solution to this problem is clear. The dissent of Justice Douglas in *Pierson v. Ray* should become the standard of modification of the doctrine of judicial immunity. Justice Douglas stated by footnote to his Opinion, the obvious construction, as follows:

"The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function. When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices". Footnote 6, 18 L Ed 2d 288, at pages 301 and 302. [emphasis added].

The rule of *Pierson v. Ray* must be exhaustively reconsidered in light of the arbitrary or capricious "acts" by Judge Baldwin in this case. Here, there was no evidence of discretion or individual judgment, as the results of the Judge's conduct imply a failure of discretion or judgment of any quality or kind whatsoever.

We think the Court of Appeals misconstrued the basis of the claim by Ammons under 42 U.S.C. §1983. Moreover, its own Opinion drains the concept of fair

application of the doctrine of absolute judicial immunity (recognized by this Court in *Pierson*), of its meaning by declaring that "the part of Ammons' claim that does not fail because of judicial immunity, therefore, fails because it does not allege an injury which rises to the minimal level required to invoke federal jurisdiction."[26]

While it is well-settled that the doctrine of judicial immunity has "a deep root in the common law",[27] the several courts have applied the maxim that the end does not justify the means.[28] In this context, "the law places the burden of mistake on the shoulders of him who makes it, and keeps unjust advantage from him who would profit by his own fault".[29] Similarly, "an act of the court cannot prejudice a litigant".[30] Also, "no man shall be permitted to profit by his own wrongful act".[31]

The dangers created by and resulting from a broad and indiscriminate application of *Bradley v. Fisher*, supra, and *Pierson v. Ray*, supra, pose continuing and real threats to the prohibitions of the Fourteenth Amendment to the United States Constitution. Certainly, the public interest is jeopardized if a judicial officer is insulated from the consequences of any wrongdoing regardless of the quality or nature of his acts as long as such acts are "within his jurisdiction".

It is interesting to note that the court in *Bradley v. Fisher*, supra, was divided. Justices Davis and Clifford

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26. Appendix C, A11.
27. **Yates v. Lansing**, 5 Johns., 291, cited in **Bradley v. Fisher**, 80 U.S. 335-337 (1872).
28. 15A C.J.S. §14, pp. 70-71.
29. Id., p. 72.
30. Id.
31. Id.

dissented with the view that a judge is subject to suit the same as a private person would be under like circumstances as described in *Bradley v. Fisher*, supra.

Curiously, the result in *Bradley v. Fisher*, supra, followed the enactment of the Civil Rights Act of 1871, now 42 U.S.C. §1983. While *Bradley* was argued and decided in 1872, the modern era of constitutional decisions in the body of federal law, in particular, the myriad of cases providing civil remedies to aggrieved citizens, takes its fundamental roots under §1 of the Civil Rights Act of 1871, 17 Stat. 13, now 42 U.S.C. §1983. [*Pierson v. Ray*, supra, 18 L Ed 2d 288, at page 291]. Reviewing *Bradley* in this light, it seems plausible that "every person," [who under color of state law or custom subjects, or causes to be subjected, any citizen...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress]", would mean *every* person, not *every person except judges.* [emphasis added.] [Dissent of Justice Douglas, *Pierson v. Ray*, supra, at page 297.]

CONCLUSION

Wherefore, Petitioner respectfully prays that a Writ of Certiorari be granted.

Respectfully submitted,
ATTORNEY FOR PETITIONER:

JAMES L. BONNER
(Counsel of Record)
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(601) 895-4300

NO._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JIMMY AMMONS, *Petitioner*

V.

BILLY WAYNE BALDWIN.

NOTICE OF ENTRY OF APPEARANCE

To The Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Please take notice that the undersigned attorney appears in the above-entitled action for Petitioner Jimmy Ammons.

Dated this 17th day of October, 1983.

JAMES L. BONNER
ATTORNEY FOR PETITIONER
9369 Goodman Rd.
Olive Branch, Mississippi 38654
(601) 895-4300

CERTIFICATE OF SERVICE

I certify that on the 17th day of October, 1983, three (3) true and correct copies of the above and foregoing Petition for Writ of Certiorari and Notice of Entry of Appearance were mailed to the Honorable Thomas E. Childs, Jr., attorney for Billy Wayne Baldwin, by United States first class mail, postage prepaid, at his usual business address at P.O. Box 757, Fulton, Mississippi 38843.

JAMES L. BONNER

APPENDIX A

UNITED STATES COURT OF APPEALS
For The Fifth Circuit
(Filed August 1, 1983)
No. 82-4440
Summary Calendar
D.C. Docket No. DC 82 37 LS O

JIMMY AMMONS,
Plaintiff-Appellant,
versus
BILLY WAYNE BALDWIN,
Defendant-Appellee

Appeal from the United States District Court for the Northern District of Mississippi

Before RUBIN, JOHNSON and WILLIAMS, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was taken under submission by the Court upon the record and briefs on file pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendant-appellee, the costs on appeal to be taxed by the Clerk of this Court.

MAY 31, 1983

ISSUED AS MANDATE: July 28, 1983

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
(Filed July 18, 1983)
No. 82-4440

JIMMY AMMONS,
Plaintiff-Appellant,

versus

BILLY WAYNE BALDWIN,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Mississippi

ON PETITION FOR REHEARING
JULY 18, 1983

Before RUBIN, JOHNSON and WILLIAMS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same be hereby denied.

ENTERED FOR THE COURT:
/s/Alvin B. Rubin
United States Circuit Judge

APPENDIX C

AMMONS v. BALDWIN
Cite as 705 F.2d 1445

Jimmy AMMONS, Plaintiff-Appellant,

v.

Billy Wayne BALDWIN,
Defendant-Appellee.

No. 82-4440
Summary Calendar.

United States Court of Appeals
Fifth Circuit

May 31, 1983

Plaintiff appealed from an order of the United States District Court for the Northern District of Mississippi, L.T. Senter, Jr., Chief Judge, which denied his motion to reconsider dismissal of his civil rights action against a Mississippi state judge. The Court of Appeals, Alvin B. Rubin, Circuit Judge, held that judge of Mississippi State Justice Court was immune from damages for issuing arrest warrant and requiring plaintiff to pay court costs for himself and others involved in the events leading up to his court appearance and for allegedly verbally abusing and humiliating plaintiff; however, plaintiff's claim that judge threatened to abuse him physically charged conduct that was not protected by judicial immunity but did not entitle plaintiff to any relief under section 1983 since

plaintiff, who did not allege that he was placed in fear of imminent harm or that judge took any actions indicating an immediate intent to carry out his alleged threats, failed to allege an injury which rose to minimum level required to invoke federal jurisdiction.

Affirmed.

1. Federal Courts —829

A timely appeal may be taken from denial of a motion for relief from judgement but review is limited to determining whether there was an abuse of district court's discretion in denial of the motion. Fed. Rules Civ.Proc.Rule 60(b), 28 U.S.C.A.

2. Federal Courts —770

Denial of a motion for relief from judgment does not bring up the underlying judgment for review. Fed. Rules Civ.Proc.Rule 60(b), 28 U.S.C.A.

3. Judges —36
Justices of the Peace —25

A judge of whatever status in the judicial hierarchy is immune from suit for damages resulting from any act performed in a judicial role and that immunity extends to justices of the peace and shields a judge or justice unless he acts either in the clear absence of all jurisdiction over the subject matter or in a nonjudicial capacity.

4. Judges —36

Under four-part test to determine whether an act is

sufficiently judicial to warrant immunity, court inquires whether the offending action is a normal judicial function, whether it occurred in judge's courtroom or chambers, whether the controversy involved a case pending before the judge and whether the confrontation arose directly and immediately out of a visit to the judge in his official capacity.

5. Civil Rights —13.1, 13.8[5]

Judge of Mississippi State Justice Court was immune from damages for issuing arrest warrant and requiring plaintiff to pay court costs for himself and others involved in the events leading up to his court appearance and for allegedly verbally abusing and humiliating plaintiff; however, plaintiff's claim that judge threatened to abuse him physically charged conduct that was not protected by judicial immunity but did not entitle plaintiff to any relief under section 1983 since plaintiff, who did not allege that he was placed in fear of imminent harm or that judge took any actions indicating an immediate intent to carry out his alleged threats, failed to allege an injury which rose to minimum level required to invoke federal jurisdiction. 42 U.S.C.A. §1983.

Appeal from the United States District Court for the Northern District of Mississippi.

Before RUBIN, JOHNSON, and WILLIAMS, Circuit Judges.

ALVIN B. RUBIN, Circuit Judge:

In this action against a Mississippi State Justice Court Judge, plaintiff contends the judge denied his constitu-

tional rights in violation of 42 U.S.C. §1983 (1976), by issuing a warrant for his arrest, verbally abusing and threatening him, and requiring him, on threats of incarceration, to pay court costs for himself and others involved in the events leading up to his court appearance. The federal district court dismissed the action because the state judge was protected by judicial immunity. Ammons appeals the denial of his motion to reconsider that dismissal. Finding that the ruling was within the federal judge's discretion, we affirm.

We recite the version of the facts most favorable to Ammons, as excerpted from his own brief and complaint. On February 9, 1982 at approximately 10:00 p.m., plaintiff Ammons and his friend Haygood were driving a pickup truck in DeSoto County, Mississippi. They parked the truck by the side of Mississippi State Highway 50 while taking a "rest stop." A late-model automobile struck the pickup truck, damaging its left side and door.

Although Ammons and Haygood pursued the automobile, they were unable to overtake it. They continued, however, to investigate the incident. They communicated with an Olive Branch, Mississippi police officer who advised them to file a hit-and-run complaint in the Justice Court. At the police officer's suggestion, Ammons and Haygood left for the residence of Judge Baldwin, a Mississippi State Justice Court Judge, to file such a complaint. The police officer contacted the judge by radio, however, and he left for his courtroom before Ammons and Haygood arrived. By 10:30 p.m., Ammons had concluded that the driver of the offending automobile was Nick Sapp. Ammons met Judge Baldwin at the courtroom and executed a hit-and-run affidavit against Sapp. Judge Baldwin then issued an arrest warrant for Sapp.

At approximately 12:15 of the same evening, Ammons alleges, Sapp knocked over Ammons' mailbox with an automobile. This prompted Ammons to return to Judge Baldwin's court to check on the status of the hit-and-run complaint against Sapp. The Deputy Sheriff of DeSoto County had, in the meantime, taken Sapp into custody.

Outside the courtroom, a man named Quitman Gadd appeared. He was carrying a large hunting knife in his pocket and he threatened Ammons and his friend Haygood. Shortly after this exchange, the Sheriff's Deputy ordered all inside the courtroom for a hearing on the hit-and-run complaint. It was 12:45 a.m.

The complaint alleges that as Ammons entered the courtroom he observed a number of people drinking "various forms of intoxicating liquor." It appeared to him that a party had just taken place in the courtroom. The behavior of those in the courtroom was "unusual" and "various degrees of profanity, obscenity, and other verbal abuse were openly demonstrated" by Judge Baldwin in the presence of Ammons and others. Judge Baldwin verbally abused Ammons, humiliating and embarrassing him. He threatened Ammons with bodily harm if Ammons opened his mouth.

The judge instructed Sapp and his companion, Renee Watkins, to execute affidavits charging Ammons with simple assault and Haygood with aggravated assault with a deadly weapon. He then threatened to incarcerate all of the parties involved, including Sapp and Watkins, unless Sapp, Ammons, and Haygood paid him the sum of $300. This amount represented court costs of $100 per charge on each of the three charges filed that night. Ammons made arrangements for his father-in-law to pay all of this

in cash because the others had no money and Baldwin would not accept a check.

Ammons' complaint alleged that Baldwin lacked jurisdiction over the aggravated assault charge against Haygood because the charge was a felony. It also charged that Judge Baldwin violated Mississippi statutes in exacting the $300 in court costs, and deprived Ammons of his constitutional rights by humiliating, embarrassing and threatening him.

Apparently treating the issue before him as a motion to dismiss, and without reference to the motion for summary judgment pending before him, the district court dismissed the complaint with prejudice on the ground of judicial immunity. The court found that Baldwin's actions were taken under authority of his office as Justice Court Judge and that Baldwin had jurisdiction over the offenses at issue, including Sapp's charge of simple assault against Ammons, based on Miss.Code Ann. §97-3-7(1)(b). He also ruled that Ammons' allegation concerning Baldwin's violation of Mississippi law in imposing court costs did not state a federal cause of action.

Ammons then filed a motion to reconsider. When this motion was denied, Ammons noticed an appeal from this ruling.

(1, 2) The only issue now before us, therefore is whether the district court correctly denied Ammons' motion for reconsideration. Because the motion was filed more than ten days after the district court dismissed his complaint, it was untimely as a motion to alter or amend the judgment under Fed.R.Civ.P. 59(e). Therefore, we treat the motion as one for relief from the judgment under

Fed.R.Civ.P. 60(b). A timely appeal may be taken from the denial of such a motion, but our review is limited to determining whether there was an abuse of the district court's discretion. The denial of such a motion does not bring up the underlying judgment for review. *See Browder v. Director, Department of Corrections,* 434 U.S. 257, 263, n. 7, 98 S.Ct. 556, 560 n. 7, 54 L.Ed.2d 521, 530 n. 7 (1978); *Phillips v. Insurance Co. of North America,* 633 F.2d 1165, 1167 (5th Cir. 1981).

(3) The district court did not abuse its discretion in denying Ammons' motion to reconsider. A judge, of whatever status in the judicial hierarchy, is immune from suit for damages resulting from any act performed in a judicial role. *Supreme Court of Virginia v. Consumers Union,* 446 U.S. 719, 734-35, 100 S.Ct. 1967, 1976, 64 L.Ed.2d 641, 655 (1980); *Brewer v. Blackwell,* 692 F.2d 387, 395 (5th Cir. 1982). This immunity extends to Justices of the Peace. *Id.* (citing *Turner v. Raynes,* 611 F.2d 92 (5th Cir.), *cert. denied,* 449 U.S. 900, 101 S.Ct. 269, 66 L.Ed.2d 129 (1980)). It shields the judge or justice unless he acts either in the clear absence of all jurisdiction over the subject matter or in a nonjudicial capacity. *Brewer v. Blackwell,* 692 F.2d at 396.

(4) We have established a four-part test to determine whether an act is sufficiently judicial to warrant immunity. We inquire whether: (1) the offending action is a normal judicial function; (2) it occurred in the judge's courtroom or chambers; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose "directly and immediately out of a visit to the judge in his official capacity." *Brewer v. Blackwell,* 692 F.2d at 396 (*citing Harper v. Merckle,* 638 F.2d 848, 858 (5th Cir.), *cert. denied,* 454 U.S. 816, 102 S.Ct. 93, 70 L.Ed.2d

85 (1981)).

(5) The record clearly demonstrates that Judge Baldwin's actions in issuing the arrest warrant and requiring Ammons to pay court costs were protected by judicial immunity. These actions fully satisfy each part of the test set forth in *Brewer*. The allegations that Judge Baldwin verbally abused and humiliated Ammons also describe immune conduct. Judge Baldwin used the challenged language in an effort to conduct the hit-and-run hearing. That Baldwin may have chosen words that few judges would use does not lessen the judicial character of the proceeding.

Ammons' claim that Judge Baldwin threatened to abuse him physically, however, charges conduct that is not protected by judicial immunity. Even this conduct meets the last three criteria set forth in *Brewer*. But the threat of physical abuse is clearly not a normal judicial function.

In *Gregory v. Thompson*, 500 F.2d 59, 64 (9th Cir. 1974), the Ninth Circuit held that a judge was not entitled to immunity for using physical force to remove from the courtroom a person who refused to leave voluntarily. The threat of physical force, like its actual application, strays too far from the normal conduct of a judge to enjoy immunity. We recognize judicial immunity because "judges should be at liberty to exercise their functions with independence and without fear of consequences." *Pierson v. Ray*, 386 U.S. 547, 554, 87 S.Ct. 1213, 1218, 18 L.Ed.2d 288, 294 (1967). Refusing to extend that immunity to threats of physical harm is unlikely to inhibit fearless exercise of the judicial function.

However, "[e]ven in the field of constitutional torts *de minimis non curat lex*. Section 1983 is a tort statute. A tort to be actionable requires injury." *Bart v. Telford*, 677 F.2d 622, 625 (7th Cir. 1982). In *Raymon v. Alvord Independent School District*, 639 F.2d 257 (5th Cir. 1981), we held that some claims of constitutional deprivation were too minor to effectively invoke federal jurisdiction.

The only portion of Ammons' claim that is not defeated by the doctrine of judicial immunity is his assertion that Judge Baldwin threatened to harm Ammons physically if he opened his mouth or asked further questions of the judge. There is no assertion that Ammons was placed in fear of imminent harm, or that Baldwin took any actions indicating an immediate intent to carry out the alleged threats. The part of Ammons' claim that does not fail because of judicial immunity, therefore, fails because it does not allege an injury which rises to the minimal level required to invoke federal jurisdiction.

For these reasons, the judgment is AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

JIMMY AMMONS,
Plaintiff,

v. NO. DC82-37-LS-0

BILLY WAYNE BALDWIN,
Defendant.

MEMORANDUM OPINION

This matter comes before the court on the defendant's motion to dismiss. Being of the opinion that plaintiff's section 1983 action is barred by the doctrine of judicial immunity, the court enters the present memorandum opinion and accompanying order dismissing plaintiff's action.

A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave errors or influenced by malice and corruption. *See, e.g., Dennis v. Sparks*, 449 U.S. 24, 31 (1980); *Stump v. Sparkman*, 435 U.S. 349, 359 (1978). The factors determining whether the act under fire is judicial relate to the nature of the act itself, whether it is a function normally performed by a judge, and whether the parties dealt with the judge in his judicial capacity. *Id.* at 362.

The most important inquiry in determining whether the judge is immune is whether at the time he took the challenged action he had jurisdiction over the subject matter before him. The scope of the judge's jurisdiction is construed broadly, with a judge being deprived of

immunity only when he acts in *clear absence of all jurisdiction. See id.* at 357; *Turner v. Raynes*, 611 F. 2d 92 (5th Cir.), reh. denied 614 F. 2d 1298 (1980).

In the present case there is no question that plaintiff dealt with defendant in his judicial capacity. In fact, in several places in plaintiff's complaint he made it clear that defendant's actions were undertaken under the authority of his office as Justice Court Judge for DeSoto County and as official court business. Likewise, there is no question that the defendant had jurisdiction over the offenses at issue, including the charge against plaintiff of simple assault based upon Mississippi Code Annotated §97-3-7(1) (b).

Though plaintiff contends that defendant imposed costs against him in violation of several state statutes, a section 1983 action must be based upon deprivation of federally created rights, not merely upon the violation of state statutes. *See, e.g., Missouri ex rel. Gore v. Wochner*, 475 F. 2d 274 (E.D. Mo. 1979). Plaintiff having failed to overcome the defense of sovereign immunity, defendant's motion must be granted.

An appropriate [order] will be entered dismissing plaintiff's complaint.

This 22nd day of September, 1982.

/s/L.T. Senter, Jr.
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

JIMMY AMMONS — PLAINTIFF

V. — CIVIL ACTION NO. DC 82-37-LS-0

BILLY WAYNE BALDWIN — DEFENDANT

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT AND/OR MOTION TO DISMISS

STATE OF MISSISSIPPI
COUNTY OF DESOTO

Jimmy Ammons, being duly sworn, upon his oath, deposes and says:

I am Jimmy Ammons, an adult resident citizen of DeSoto County, Mississippi, residing at 4082 Highway 305 South, Olive Branch, Mississippi 38654. Based upon an occurrence involving a motor vehicle in which I was an operator, and later a passenger, on February 9, 1982, near Olive Branch, Mississippi, I caused a general affidavit to be executed against Nick Sapp with a hit and run violation. This affidavit was executed before Justice Court Judge Billy Wayne Baldwin, Defendant in the above cause. This charge was filed with reasonable cause, and at no time did the Defendant, Justice Court Judge Billy Wayne Baldwin, make any statements regarding obligation for payment of court costs arising from the

issuance of such affidavit. Later that evening, and in the early morning hours of February 10, 1982, a series of events took place regarding the hit and run charge.

In the early morning hours of February 10, 1982, the Defendant returned to his courtroom in the City of Olive Branch, Mississippi, and unlocked the front entrance to the courtroom. At this time, I observed that several persons were inside the courtroom area drinking intoxicating beverages including beer and liquor. I observed several bottles of opened and unopened bottles of beer on several tables in the courtroom. The other persons had been drinking for a period of two to four hours, since I had previously observed them drinking in the courtroom earlier on February 9, 1982, when I initially met with the Defendant and caused the affidavit to be executed and issued against Nick Sapp.

At approximately 12:00 a.m., on February 10, 1982, I entered the courtroom after the Defendant had unlocked it. After entering the courtroom, Defendant Baldwin threw his black briefcase onto a table near the front entrance to the courtroom and stated "I am tired of fooling with you sorry mother fuckers". After sitting down, Defendant Baldwin further stated "the first sorry son-of-a-bitch that tells me a lie is going to jail". At this point in time, Defendant Baldwin stated that "I want to hear what happened about the accident". I then responded by stating to Defendant Baldwin what I felt were the facts concerning the accident after which time Defendant Baldwin abruptly stated "shut your god damn mouth".

After stating the above, Defendant Baldwin then requested other comments from Nick Sapp and Renee

Watkins. Sapp and Watkins had been traveling together in a late model automobile which was owned by Renee Watkins. Defendant Baldwin questioned Renee Watkins as to her understanding of the facts concerning the hit and run charge and she then told the Judge that she and Sapp had not committed the offense as charged by Ammons in his affidavit and that Ammons had attempted to run into the rear of her vehicle during the time of the incident. She further advised Defendant Baldwin that Ricky Haygood had attempted to cut Nick Sapp's throat at some time during the previous evening. I immediately recognized that this testimony by Renee Watkins was incorrect, as Ricky Haygood and I had had no previous contact of any kind with Sapp or Watkins on the previous day. I personally had no prior contact of any kind with Renee Watkins until February 6, 1982, when I visually observed Nick Sapp riding as a passenger in another vehicle being driven by Ricky Haygood's cousin. I had no direct contact of any kind with Sapp until we met with Defendant Baldwin in the courtroom on February 10, 1982.

After receiving the statements from Renee Watkins, Defendant Baldwin informed Watkins and Sapp that they could execute affidavits against Ammons and Haygood charging Ammons with assault, and Haygood with aggravated assault with a deadly weapon. After I heard Defendant Baldwin make this announcement to Watkins and Sapp, I attempted to leave the courtroom and return to my residence. At this point in time, Defendant Baldwin stated "set your sorry mother fucking ass down or before I knock you down". Defendant Baldwin stood up at the table and indicated to me that he would hit me with his arm if I did not sit down.

After being threatened by Defendant Baldwin, I sat

down and made no further statements of any kind. Defendant Baldwin then returned to his seat and began preparation of the affidavits to be signed by Sapp and Watkins. While preparing the affidavits, Defendant Baldwin stated "you sorry mother fuckers are going to eat breakfast with Denver Sowell (Sheriff of DeSoto County) in the morning if I don't get $300.00 for dropping the charges". Defendant Baldwin further stated "all you sorry mother fuckers are going to jail if I don't get the $300.00 and Ammons and Haygood are going to jail and I am going to put them under $35,000.00 bond if Ammons doesn't get me the $300.00". Defendant Baldwin further stated "this is a package deal, either one pays or all go to jail".

Defendant Baldwin also stated to Sapp and Watkins that "I ought to take you sorry mother fuckers to jail and leave you there because you have been running around on dope all day long. Your god damn pupils are about to pop out of your head. Renee Watkins, you ain't nothing but a straight out whore."

I further witnessed Defendant Baldwin physically placing Nick Sapp's right hand on the place to be executed on the affidavit, since Sapp appeared to be totally incapacitated under the influence of drugs. Sapp then signed the affidavit charging Ricky Haygood with aggravated assault with a deadly weapon. After the affidavit against Haygood was signed by Sapp, Defendant Baldwin then prepared a second affidavit to be signed by Renee Watkins charging Ammons with assault. At this point in time, while preparing this affidavit, Defendant Baldwin announced to Renee Watkins that he was preparing such affidavit and requested her to sign it. Renee Watkins responded to Defendant Baldwin by

stating that she would not agree to sign such affidavit against Ammons since he was not responsible for anything. As I recall, Nick Sapp had also stated, while signing his affidavit, that I was not responsible for anything.

Renee Watkins refused to sign the second affidavit and then Defendant Baldwin began a preparation of a bench warrant against Ammons arising from the affidavit signed by Sapp. At this time, Defendant Baldwin stated "if you don't make up your mother fucking minds as to who is going to pay the $300.00, all of you mother fuckers are going to jail". I was stunned and shocked at this turn of events.

Defendant Baldwin then looked at me and Haygood and stated "you sorry sons-of-bitches are facing ten (10) years in Parchman (Mississippi's State Penitentiary) if these charges are not dropped. If the charges are dropped, it will be a package deal for all of you, one or none, and it will cost you $300.00." I was very upset and nervous after hearing this statement by Defendant Baldwin.

I then asked Defendant Baldwin if I could write a personal check for the $300.00 and Defendant Baldwin stated "I can't read a god damn check this time of the morning, I want cash or you are all going to jail." I then asked Defendant Baldwin if I could make a telephone call to my father-in-law who resides near Olive Branch, Mississippi, and he told me to go inside the adjacent room (his small office) and use his telephone for this purpose. I went into the office and contacted my father-in-law by telephone and asked him to bring me $300.00 in cash because I had gotten into the middle of something.

Approximately fifteen (15) minutes later, my father-in-law came to the courtroom and delivered to me the $300.00 in cash. At this point in time, my father-in-law, James Brown, asked Defendant Baldwin if he, Brown, could sign a property bond guaranteeing my court appearance as required by the Judge, and Defendant Baldwin then stated "it's a package deal, I want $300.00 in cash or all the sorry mother fuckers are going to jail." After this statement by Defendant Baldwin, my father-in-law handed the $300.00 in cash to Defendant Baldwin and the Defendant wrote out a receipt indicating that I had paid the $300.00 on behalf of all three (3) parties. Again, at no time did I indicate or suggest to Defendant Baldwin that any charges should be dropped for any reason.

After paying the $300.00 in cash to Defendant Baldwin, as above stated, I left the courtroom and returned to my residence. After returning to my home, I found my wife, Shirley, and our two (2) children, Noria Jean Ammons, and Tony Ammons, visibly upset and in a state of shock. My mother-in-law, Nadine Brown, was also present upon my arrival at my residence, and she found it unbelievable that I had been forced to pay the sum of $300.00 on behalf of other persons charged with crimes. She appeared in a state of shock over the turn of events.

On the morning of February 10, 1982, at approximately 9:30 a.m., I contacted attorney James L. Bonner of Olive Branch, to report the foregoing incident to him. At that time, I requested Mr. Bonner's legal services concerning the problems I had encountered with Defendant Baldwin on February 9, and February 10, 1982.

/s/Jimmy Ammons

Sworn to and subscribed before me this the 16th day of April, 1982.

/s/Carole Crowdus
Notary Public

My commission expires:
7-14-82

APPENDIX E

APPELLANT'S BRIEF

STATEMENT OF ISSUE

Appellant (Ammons) contends that the Trial Court improperly dismissed Plaintiff's Complaint while granting the Motion to Dismiss of Appellee (Baldwin). Appellant submits that the Trial Court's error resulted from its misapplication of the doctrine of judicial immunity to the facts of the case at bar.

This controversy arose out of a series of events occurring on February 9 and February 10, 1982, in and/or near the City of Olive Branch, DeSoto County, Mississippi. Appellant (Ammons) had pursued a "hit-and-run" charge against a person named Nick Sapp. The affidavit for this charge was filed with Justice Court Judge Baldwin on the evening of February 9, 1982. At the time of the filing of the affidavit by Ammons, Judge Baldwin was ostensibly under the influence of alcoholic intoxicants resulting in unusual or abnormal behavior by said Judge during subsequent hours of that evening and at other time on the following morning.

In the early morning hours of February 10, 1982, Ammons reappeared before Judge Baldwin to pursue the hit-and-run charge against Nick Sapp. Judge Baldwin failed to disqualify or otherwise recuse himself from this proceeding, even though he was ostensibly operating or performing his courtroom "business" while under the influence of intoxicating beverages. Baldwin subsequently permitted, or persuaded, the Defendant, Nick Sapp, to sign an affidavit charging Ammons with "assault" for some mysterious or unexplainable reason.

In the course of the "courtroom proceedings", Judge Baldwin ordered Ammons to pay the "sum of $300.00 in cash", on behalf of Sapp, Ammons, and a third person, Ricky Haygood, or suffer confinement to the DeSoto County Jail in Hernando, Mississippi. Ammons determined that he had no choice except to comply with the order for payment of the $300.00, and this sum was paid in due course to Judge Baldwin.

Ammons brought suit against Baldwin to recover civil damages resulting from the action by the Judge on February 9 and February 10, 1982. Ammons instituted an action pursuant to 42 U.S.C. §1983, which makes liable "every person" who under color or law, deprives another person of his civil rights. As a result, the Trial Court made a determination that the doctrine of judicial immunity, as raised in a Motion to Dismiss by Judge Baldwin, would preclude any remedy under 42 U.S.C. §1983, as sought by Ammons.

The Trial Court, in its ruling, found that the acts of Judge Baldwin were shielded by the defense of judicial immunity. Ammons submits that Judge Baldwin was stripped of this defense when his conduct, by its own nature and function, caused the Judge to act without judicial authority or jurisdiction. Ammons contends that Judge Baldwin committed acts which are wholly incompatible with judicial function. Accordingly, Ammons submits that a judicial function or act must be grounded in the underlying framework of jurisdiction and judicial power.

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
(Filed September 13, 1983)
NO. 82-4440

JIMMY AMMONS *Plaintiff-Appellant*
V.
BILLY WAYNE BALDWIN *Defendant-Appellee*

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Jimmy Ammons, the Plaintiff-Appellant, above-named, hereby Appeals to The Supreme Court of the United States, from the Final Order entered in this action on July 18, 1983.

This Appeal is taken pursuant to Title 28, United States Code, Section 1254 (1).

Dated this the 9th day of September, 1983.

BONNER & BIRMINGHAM
ATTORNEYS FOR PLAINTIFF-APPELLANT
By /s/James L. Bonner
9369 Goodman Road
Olive Branch, Mississippi 38654
(601) 895-4300

CERTIFICATE OF SERVICE

I, James L. Bonner, attorney for Plaintiff-Appellant, hereby certify that I have this date mailed a true and correct copy of the above and foregoing Notice of Appeal to the Supreme Court of the United States, by United States Mail, postage prepaid, to the Honorable Thomas E. Childs, Jr., attorney for Defendant-Appellee, P.O. Box 757, Fulton, Mississippi 38843.

This the 9th day of September, 1983.

/s/James L. Bonner